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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CARL E. GAMACHE, } Case No. CV 13-9202 JCG
Plaintiff, }
v. }
CAROLYN W. COLVIN, ACTING }
COMMISSIONER OF SOCIAL }
SECURITY ADMINISTRATION, }
Defendant. }

MEMORANDUM OPINION AND
ORDER

Carl E. Gamache (“Plaintiff”) challenges the Social Security Commissioner’s decision denying his application for disability benefits. Plaintiff contends that the Administrative Law Judge (“ALJ”) erred in determining his residual functional capacity (“RFC”). (*See* Joint Stip. at 5-12, 14-15.) Specifically, the ALJ failed to translate language used in Plaintiff’s workers’ compensation disability reports into comparable Social Security terminology. (*Id.*) The Court agrees with Plaintiff for the reasons discussed below.

A. The ALJ Erred in Determining Plaintiff’s RFC

Plaintiff contends that his RFC was under-inclusive because the ALJ failed to translate the opinion of Dr. Vincent L. Gumbs, the qualified medical examiner in

1 Plaintiff's workers' compensation case, into Social Security parlance. (*Id.*)

2 A claimant's RFC is the most he can still do despite his limitations. *Smolen v.*
 3 *Chater*, 80 F.3d 1273, 1291 (9th Cir. 1996) (citing 20 C.F.R. § 404.1545(a)). In
 4 determining a claimant's RFC, the ALJ must consider all relevant evidence of
 5 record, including medical opinions. *Robbins v. Soc. Sec. Admin.*, 466 F.3d 880, 883
 6 (9th Cir. 2006); *see* 20 C.F.R. § 404.1527(b). Significantly, unless an ALJ expressly
 7 rejects a particular medical opinion, he must consider its findings when crafting the
 8 claimant's RFC. *Lester v. Chater*, 81 F.3d 821, 834 (9th Cir. 1995) (When "the
 9 Commissioner fails to provide adequate reasons for rejecting the opinion of a . . .
 10 physician, we credit that opinion as a matter of law.") (citation and internal quotation
 11 marks omitted).

12 To that end, when evaluating a medical opinion using state workers'
 13 compensation terminology, an ALJ must translate it into the corresponding Social
 14 Security parlance. *Desrosiers v. Sec'y of Health & Human Servs.*, 846 F.2d 573,
 15 576 (9th Cir. 1988) (finding error where ALJ failed to distinguish between Social
 16 Security disability scheme and California workers' compensation scheme); *Booth v.*
 17 *Barnhart*, 181 F. Supp. 2d 1099, 1106 (C.D. Cal. Jan. 22, 2002) (The ALJ's
 18 decisions should "indicate that the ALJ recognized the differences between the . . .
 19 [two schemes,] and took those differences into account in evaluating the medical
 20 evidence."); *see Macri v. Chater*, 93 F.3d 540, 543-44 (9th Cir. 1996). If an ALJ
 21 fails to translate workers' compensation terminology, he will be unable to properly
 22 assess the opinion, or incorporate its findings into Plaintiff's RFC. *See id.*

23 Here, Dr. Gumbs provided an opinion couched in workers' compensation
 24 terminology. (*See* Administrative Record ("AR") at 720.) In particular, he found
 25 that Plaintiff was precluded from "repetitive and prolonged gripping and grasping,"
 26 among other things. (*Id.*) For workers' compensation purposes, a preclusion from
 27 "repetitive" behavior contemplates a one-half reduction in pre-injury capacity.
 28 *Brooks v. Astrue*, 2012 WL 2373628, at *5 (C.D. Cal. June 22, 2012); *see* Schedule

1 for Rating Permanent Disabilities (Labor Code of California 1997),
 2 www.dir.ca.gov/dwc/PDR1997.pdf (last visited Oct. 27, 2014). Thus, assuming that
 3 Plaintiff was operating at full capacity prior to his injury, Dr. Gumbs suggests that
 4 Plaintiff can now grip or grasp only *half* of the workday. (*See* AR at 719-20.)

5 Nevertheless, the ALJ made no detectable effort to translate Dr. Gumbs'
 6 opinion into Social Security terms, or include any correlative restrictions into
 7 Plaintiff's RFC. (*See id.* at 18.) To the contrary, the positions identified by the ALJ
 8 as within Plaintiff's RFC, including cashier, (Dictionary of Occupational Titles
 9 ("DOT") No. 211.462-010), storage facility clerk, (Dot No. 295.367-026), and
 10 counter attendant, (Dot. No. 311.677-010), all require "*frequent* handling." (AR at
 11 24) (emphasis added); *see* Social Security Ruling ("SSR") 85-15, 1985 WL 56857,
 12 at *2 (1985) (defining handling as "seizing, holding, grasping, turning or otherwise
 13 working primarily with the whole hand or hands"). For Social Security purposes,
 14 "frequent" means "occurring from one-third to *two-thirds* of the time." SSR 83-10,
 15 1983 WL 31251, at *6 (1983). Thus, by requiring Plaintiff to grip or grasp more
 16 than one-half of the time, the ALJ implicitly rejected Dr. Gumbs' opinion. *See*
 17 *Baltazar v. Astrue*, 2012 WL 2319263, at *5 (C.D. Cal. June 19, 2012).

18 The rejection is proper only if the ALJ provided specific and legitimate
 19 reasons to support it. *See Carmickle v. Comm'r, Soc. Sec. Admin.*, 533 F.3d 1155,
 20 1164 (9th Cir. 2008) (An ALJ may reject the opinion of an examining physician
 21 only for "specific and legitimate reasons that are supported by substantial
 22 evidence.") (citation omitted); *Lester*, 81 F.3d 821 at 834. In this case, the ALJ gave
 23 no rationale for rejecting Dr. Gumbs' opinion. (*See generally* AR at 22-23.) To the
 24 contrary, the ALJ stated that he gave Dr. Gumbs' opinion "moderate weight." (*Id.* at
 25 23.) Thus, because the ALJ never properly rejected Dr. Gumbs' opinion, he erred by
 26 omitting its findings from Plaintiff's RFC. *See Baltazar*, 2012 WL 2319263, at *5
 27 (finding error in RFC where physician precluded claimant from "repetitive" gripping
 28 and grasping, ALJ did not properly translate or reject the opinion, and RFC allowed

¹ for “frequent” gripping and grasping); *Brooks*, 2012 WL 2373628, at *5 (holding similarly).

B. Remand is Warranted

With error established, this Court has discretion to remand or reverse and award benefits. *McAllister v. Sullivan*, 888 F.2d 599, 603 (9th Cir. 1989). Where no useful purpose would be served by further proceedings, or where the record has been fully developed, it is appropriate to exercise this discretion to direct an immediate award of benefits. *See Benecke v. Barnhart*, 379 F.3d 587, 595-96 (9th Cir. 2004). But where there are outstanding issues that must be resolved before a determination can be made, or it is not clear from the record that the ALJ would be required to find plaintiff disabled if all the evidence were properly evaluated, remand is appropriate. *See id.* at 594.

13 Here, in light of the ALJ's error, Plaintiff's RFC was not properly assessed.
14 Therefore, on remand, the ALJ shall translate Dr. Gumbs' opinion into Social
15 Security terms, and either include its findings in Plaintiff's RFC, or provide valid
16 reasons for any portion that is rejected.

17 Based on the foregoing, IT IS ORDERED THAT judgment shall be entered
18 **REVERSING** the decision of the Commissioner denying benefits and
19 **REMANDING** the matter for further administrative action consistent with this
20 decision.^{1/}

22 || Dated: October 31, 2014

Hon. Jay C. Gandhi
United States Magistrate Judge

²⁷ ^{1/} In light of the Court's remand instructions, it is unnecessary to address Plaintiff's
28 remaining contention. (See Joint Stip. at 16-18, 20-21.)